

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

GMAC MORTGAGE CORP.,

Plaintiff,

v.

JEFFREY L. BAYKO, SR., LISA J. BAYKO,

HELEN E. BAYKO, MICHAEL J. BAYKO,

BANKNORTH GROUP, HANS R. HAILEY,

CHARLES R. ROTONDI,

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF REVENUE, UNITED

STATES OF AMERICA, GARY EVANS,

CHRISTINE ANN FARO, and JOHN AQUINO,

Defendants.

Civil No. 04-12448-GAO

34-12448-GAO

UNITED STATES' ANSWER

1. *The plaintiff, GMAC, is a corporation having its usual place of business at 500 Enterprise Road, Horsham, PA 19044.*

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the complaint.

2. *The Defendant, Jeffrey L. Bayko, Sr., is upon information and belief, an individual c/o Attorney Gary Evans, 58 Main Street, Topsfield, MA 01983.*

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the complaint.

3. *The Defendant, Lisa J. Bayko, is upon information and belief, an individual c/o Attorney Charles D. Rotondi, 79 State Street, Newburyport, MA 01950.*

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the complaint.

4. *The Defendants, Helen E. Bayko and Michael J. Bayko, are upon information and belief, individuals c/o Timothy Sullivan, 451 Andover Street, Suite 185, North Andover, MA 01845.*

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the complaint.

5. *The Defendant, Banknorth Group, is upon information and belief, a financial institution with a last known address of P.O. Box 1503, Orleans, MA 02653.*

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the complaint.

6. *The Defendant, Hans R. Hailey, is upon information and belief, an individual with a last known address of 225 Friend Street, Boston, MA 02114.*

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the complaint.

7. *The Defendant, Charles D. Rotondi, is upon information and belief, an individual with a last known address of 79 State Street, Newburyport, MA 01950.*

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the complaint.

8. *The Defendant, Commonwealth of Massachusetts Department of Revenue, is upon information and belief, a state agency with a usual place of business of Collections Bureau, P.O. Box 7021, Boston, MA 02204.*

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the complaint.

9. *The Defendant, The United State [sic] of America, is upon information and belief,*

a federal agency with a usual business address of the Internal Revenue Services [sic], P.O. Box 9112, Stop 20800, Boston, MA 02203.

RESPONSE: The United States admits that the Internal Revenue Service is an agency of the United States of America and that it has a mail address as indicated above. The United States avers, however, that the proper party defendant to this action is the United States, and, as a result, the proper party for service of pleadings and other papers is the United States, and not the Internal Revenue Service.

10. *The Defendant, Gary Evans, is upon information and belief, an individual with a last known address of 58 Main Street, Topsfield, MA 01983.*

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the complaint.

11. *The Defendant, Christine Ann Faro, is upon information and belief, an individual with a last known address of 79 State Street, Newburyport, MA 01950.*

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the complaint.

12. *The Defendant, John Aquino, is upon information and belief, an individual with a last known address of Anderson & Aquino, LLP, 260 Franklin Street, Boston, MA 02110.*

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the complaint.

13. *The Plaintiff, GMAC, was the holder by assignment of a first mortgage given by Jeffrey L. Bayko and Lisa J. Baykoto to The Family Mutual Savings Bank, dated May 20, 1993 and recorded with the Essex County (Southern District) Registry of*

Deeds at Book 11897, Page 525, securing the real estate located at 14A Graham Avenue, Newbury, MA 01951 ("the property").

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the complaint.

14. *On March 12, 2004, GMAC foreclosed on the mortgaged property by public auction.*

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the complaint.

15. *The mortgaged property was sold to a third party for \$307,500.00.*

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the complaint.

16. *After satisfaction of the indebtedness to the Plaintiff, including costs of foreclosure and sale, accrued interest and late charges in the aggregate sum of \$102,757.41, there is a surplus now held by the Plaintiff in the amount of \$186,742.59. See Exhibit "A" attached hereto.*

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the complaint.

17. *The following persons and entities appear of record to be all of the persons or entities having an interest in said funds held by GMAC, to wit:*

(a) *The Defendant, Jeffrey L. Bayko, Sr., is the former holder of the equity of redemption;*

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17(a) of the complaint.

(b) *The Defendant Lisa J. Bayko, is the former holder of the equity of redemption;*

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17(b) of the complaint.

(c) *The Defendant, Banknorth Group, is the holder of a Mortgage dated April 24, 1997 and recorded April 24, 1997 in the Essex County Registry of Deeds at Book 14068, Page 475 in the original principal amount of \$15,000.00.*

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17(c) of the complaint.

(d) *The Defendants, Michael J. Bayko and Helen E. Bayko, are the holders of a third mortgage dated July 19, 2002, and recorded August 12, 2002 in the Essex County Registry of Deeds at Book 21193, Page 386 in the original principal balance of \$6,300.00.*

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17(d) of the complaint.

(e) *The Defendant, Hans R. Hailey, is the holder of an Attorney's Lien dated February 6, 2003 and recorded February 10, 2003 in the Essex County Registry of Deeds at Book 20139, Page 71.*

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17(e) of the complaint.

(f) *The Defendant, Charles D. Rotondi, is the holder of an Attorney's Lien dated February 11, 2003 and recorded March 20, 2003 in the Essex*

County Registry of Deeds at Book 20391, Page 444.

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17(f) of the complaint.

(g) *The Defendant, Commonwealth of Massachusetts Department of Revenue, is the holder of a state tax lien dated and recorded on April 4, 2003 in the Essex County Registry of Deeds at Book 20521, Page 207, in the original amount of \$8,463.64.*

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17(g) of the complaint.

(h) *The Defendant, United States of America is the holder of a federal tax lien dated May 1, 2003, and recorded on June 3, 2003 in the Essex County Registry of Deeds at Book 20949, Page 90 in the original amount of \$47,196.80. Upon information and belief, the IRS holds numerous other liens against Jeffrey L. Bayko.*

RESPONSE: Upon information and belief, the United States admits the allegations contained in paragraph 17(h) of the complaint, but avers that it has not yet completed its investigation of this matter, nor has counsel for the United States received all documentation from the Internal Revenue Service to substantiate the allegations contained in paragraph 17(h) of the complaint.

(i) *The Defendant, Gary Evans, is supposed to receive \$66,000.00 to be held in escrow pursuant to the terms of a Separation Agreement dated and recorded May 24, 2002 in the Essex County Registry of Deeds at Book 21764, Page 59.*

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17(i) of the complaint.

(j) *The Defendant, Christine Ann Faro, is the holder of an Attorney's Lien dated and recorded October 2, 2003 in the Essex County Registry of Deeds at Book 21911, Page 222.*

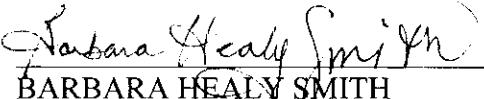
RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17(j) of the complaint.

(k) *The Defendant, John Aquino, is a Chapter 7 Trustee who has abandoned his interest in the real estate.*

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17(k) of the complaint.

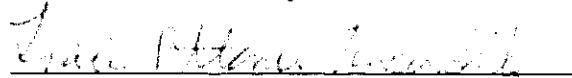
WHEREFORE, the United States requests that its interests be paid pursuant to the priority determined by this Court with respect to the interplead funds, and such other relief as this Court deems just and proper.

I hereby certify that a true copy of the above document was served upon (each party appearing pro se and) the attorney of record for each other party by mail on

19th November 2004

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Respectfully submitted,

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